

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0106P**

Gross Income Tax

For Calendar Years 1994, 1995, 1996, and 1997

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer provides loans, equipment financing, and leasing to commercial businesses. It primarily leases construction and transportation equipment. Taxpayer files a federal consolidated 1120 income tax return with its non-insurance affiliates.

The principal issue of the audit was the disallowance of the taxpayer's filing as a financial institution. Beginning in 1990, taxpayer filed FIT-20 returns in Indiana. For federal tax purposes, the taxpayer is treating a high percentage of its lease income as rental type income to qualify as a financial institution.

At audit, an examination of the taxpayer's federal income tax returns revealed that it did not satisfy the requirement as stated in IC 6-5.5-1-17(d)(2)(B). Taxpayer did not meet the definition of a financial institution. Taxpayer's federal income tax returns revealed that less than eighty percent (80%) of its income was derived from activities listed in IC 6.5.5-1-17. Specifically, line 6 (gross rents) of the federal return showed rental income of between forty-nine percent (49%) and sixty percent (60%) of total income.

Taxpayer requests that the department waive the negligence penalty.

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### **DISCUSSION**

Taxpayer was assessed a negligence penalty because it filed form FIT-20 when it did not qualify to utilize the form. By failing to file IT-20's, the taxpayer did not pay gross income tax as required.

Taxpayer, in a letter dated February 8, 2000 protested penalties assessed and states it has reasonable cause for failing to report gross income. Taxpayer states it had no reason to believe, nor had it been told that it was using an incorrect form. Further, taxpayer states it was not aware that there is an eighty percent (80%) threshold requirement and requests the penalty be waived as it did not act with willful neglect or disregard for the law.

The audit covering four years indicates that the taxpayer filed FIT-20 returns and checked "A" that asks: "Is 80% or more of your gross income derived from making, acquiring, selling, servicing loans or extension of credit, lease financing and credit or other card operations? If you answer NO, Do Not File This Return (File Form IT-20)". Taxpayer's failure to read and/or verify that it qualified as a financial institution is negligent and taxpayer has failed to show reasonable cause.

### **FINDING**

Taxpayer's protest is denied.